

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	I.D. # 0512020169
)	
BRUCE WOOD,)	
Defendant)	
)	

Date Submitted: August 15, 2009
Date Decided: August 24, 2009

REPORT AND RECOMMENDATION

Defendant's Pro Se Motion for Postconviction Relief should be
DENIED.

On this 24th day of August, 2009, it appears to the Court that:

1. Defendant was indicted on eight counts of Rape in the First Degree with a Victim Under the Age of 12 ("Rape-Victim <12"), ten counts of Rape in the First Degree by a Person in a Position of Trust, and two counts of Continuous Sexual Abuse of a Child.
2. Prior to trial, Defendant, through his counsel ("Counsel"), moved to sever the charges as to the two different victims. This motion was denied.
3. After an eight day trial, a Superior Court jury returned guilty verdicts on

six of the eight counts of Rape-Victim <12, and all of the remaining 12 counts of the indictment. Defendant was sentenced to 290 years in prison.

4. Defendant now files a timely Motion for Postconviction Relief (“Rule 61 Motion”), in which he asserts six grounds for relief from his guilty verdict and lengthy sentence. Specifically, Defendant alleges:

Ground 1 - The trial court erred by denying Defendant’s Motion to Sever;

Ground 2 - Trial Counsel was ineffective by failing to file a supplemental brief which he alleges was mandated by the Court;

Ground 3 - Trial Counsel was ineffective because he “failed to do any [p]re-trial investigation and was deficient in trial preparedness[,] . . . [failed] to call any witnesses on [D]efendant’s behalf, [and failed to] . . . investigate or research the credibility of alleged victims;”¹

Ground 4 - The trial court erred by allowing “joinder” of offenses; and

Ground 5 - Counsel was ineffective because he failed to investigate and “develop mitigating evidence” for the sentencing phase.

Ground 6 - Prosecutor made improper opening and closing comments and arguments.

5. Before addressing the substantive merits of any claim for postconviction relief, the Court must determine whether the defendant has satisfied the procedural

¹ Def. Rule 61 Motion (“Def. Mtn.”), Supporting Memo (“Def. Supp. Mem.”), 3.

requirements of Superior Court Criminal Rule 61 (“Rule 61”).² In order to protect the procedural integrity of Delaware’s rules, the Court will not consider the merits of a postconviction claim that fails any of Rule 61's procedural requirements.³

6. Rule 61(i) establishes four procedural bars to motions for postconviction relief: (1) the motion must be filed within one year of a final judgment of conviction;⁴ (2) any grounds for relief which were not asserted previously in any prior postconviction proceeding are barred; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules; and (4) any basis for relief must not have been formerly adjudicated in any proceeding. However, a defect under Rule 61(i)(1), (2), or (3) will not bar a movant’s “claim that the court lacked jurisdiction or . . . a colorable claim that there was a miscarriage of justice because

² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). See also *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *State v. Mayfield*, 2003 WL 21267422, at *2 (Del. Super. Ct. June 2, 2003).

³ *State v. Gattis*, 1995 WL 790961, at *3 (Del. Super. Ct. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554).

⁴ The motion must be filed within three years if the final order of conviction occurred before July 1, 2005, and within one year if the final order of conviction occurred on or after July 1, 2005. See Rule 61, annot. *Effect of amendments*. For the purposes of Rule 61, a judgment of conviction becomes final under the following circumstances: “(1) If the defendant does not file a direct appeal, 30 days after the Superior Court imposes sentence; (2) If the defendant files a direct appeal or there is an automatic statutory review of a death penalty, when the Supreme Court issues a mandate or order finally determining the case on direct review; or (3) If the defendant files a petition for certiorari seeking review of the Supreme Court’s mandate or order when the United States Supreme Court issues a mandate or order finally disposing of the case on direct review.” Super. Ct. Crim. R. 61(m).

of a constitutional violation that undermined the fundamental legality, reliability, integrity, or fairness of the proceedings leading to the judgment of conviction.”⁵

7. Defendant’s first, fourth and sixth grounds for relief should be barred procedurally. Defendant filed a direct appeal with the Supreme Court of Delaware and that Court affirmed the trial court’s ruling allowing both victims to remain joined in this case and to be presented before the same jury. Rule 61(i)(4) bars the Defendant from relitigating the same issue presented on direct appeal. This issue has been completely reviewed and affirmed and Defendant has not presented any reasons why manifest justice requires the Court reopen the discussion.

8. Similarly, Defendant failed to present on direct appeal the issue he raises in his Rule 61 Motion’s fourth and sixth grounds for relief. The claim that the trial court erred in allowing joinder of offenses is barred under Rule 61(i)(3).

9. Moreover, in *Jackson v. State*, 2005 WL 528673, at *2 (Del.), the Supreme Court held that the defendant’s challenge of a jury instruction for the first time in a Rule 61 Motion should be barred because the defendant failed to show cause as to why the issue was not raised on or before his direct appeal. Similarly, Defendant’s Motion, if not barred under Rule 61(i)(3), should still be nonetheless barred under the holding in *Jackson*, as Defendant’s Motion simply addresses the

⁵ Super. Ct. Crim. R. 61(i)(5).

merits of his assertions, and does not address why procedural bars should be overcome in the interest of justice.

10. It should also be noted that the Supreme Court has already addressed Defendant's fourth ground for relief, finding the jury instructions sufficient when it affirmed Defendant's conviction. "The trial judge properly instructed the jury on the State's burden of proof on each count of the indictment in order to find [Defendant] guilty. They were instructed that they 'must find separately for each of those 20 counts.'"⁶ Rule 61(i)(4) bars the claim, if it has already been litigated and decided.

11. Grounds two, three, and five assert claims for ineffective assistance of counsel. Defendant alleges under ground two, that Counsel failed to file a supplemental brief or supporting authority regarding his motion to dismiss the reindictment within five days "as directed by the Motion Court Judge."⁷ Counsel admits the failure to file, but contends that he was not mandated to file anything.⁸ The State's attorney supports Counsel's assertions that both sides had "leave to file a supplement," if they so desired.⁹ In fact, the Court stated that it did not expect any

⁶ *Wood v. State*, 956 A.2d 1228, 1232 (Del. 2008).

⁷ Def. Mtn. at 2.

⁸ Defense Counsel's Affidavit ("Def. Aff."), 1.

⁹ State's Response ("St. Resp."), 7-8.

supplemental case law from Defendant which would be helpful to the defense.¹⁰

12. However, because an ineffective assistance of counsel claim alleges a constitutional basis for postconviction relief, the procedural bars contained in Rule 61(i)(1), (2), or (3) may be overcome if the defendant asserts a colorable ineffective assistance of counsel claim.¹¹

13. To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the two-part *Strickland* test by showing both: (1) that counsel's representation fell below an objective standard of reasonableness, and (2) that the errors by counsel amounted to prejudice.¹² The defendant faces a "strong presumption that the representation was professionally reasonable" in attempting to meet the first prong of the *Strickland* test.¹³ If either prong is not met, the defendant's claim against Counsel will fail.¹⁴

14. The Court gave Counsel a choice as to whether he could file further support for his motion and added that it did not expect helpful case law from the Defendant. Counsel was not required to file anything, and most likely did not have

¹⁰ *Id.* at 8.

¹¹ *See State v. MacDonald*, 2007 WL 1378332, at *4, n.17 (Del. Super. Ct. May 9, 2007).

¹² *Albury v. State*, 551 A.2d 53, 58 (Del. 1988) (citing *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)).

¹³ *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996) (citation omitted).

¹⁴ *See Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

anything further that could be filed. His actions were reasonable and Defendant fails to meet his burden under the first prong of the *Strickland* test and, therefore, his claim should fail.

15. Under the second prong of the test for ineffective assistance of counsel, the defendant must affirmatively demonstrate prejudice by showing a reasonable probability that, but for counsel's errors, the proceeding would have had a different result.¹⁵ Defendant fails to meet his burden also under this prong of *Strickland*, as well. The Court can not find the prejudice which has befallen Defendant by the lack of a supplemental filing. Even without this filing, Counsel ardently advocated on behalf of the Defendant, and provided a "thorough" argument to the motion judge.¹⁶ The trial court and the appellate court found against Defendant.

16. As Defendant was unable to meet both prongs of the *Strickland* test, his second ground for relief must fail.

17. Under ground three of his Motion, Defendant accuses Counsel of failing to prepare, failing to investigate fully, and failing to call character witnesses. These assertions are conclusory, in that they fail to specifically allege which errors affected the outcome at trial. Absent facts to support such claims of ineffective assistance of

¹⁵ *Strickland*, 466 U.S. at 694. See also *Fletcher v. State*, 2006 WL 1237088, at *2 (Del. Super. Ct. May 9, 2006).

¹⁶ St. Resp. at 8.

Counsel, Defendant's motion should be dismissed.¹⁷

18. Defendant's third ground for relief also fails to fulfill his requirements under *Strickland*. In order to overcome the strong presumption that Counsel's actions were professionally reasonable, Defendant must provide the Court with reasons why Counsel's actions could not be considered "sound trial strategy."¹⁸ Even if Counsel's actions show "[i]solated poor strategy, inexperience, or bad tactics," these actions do not necessarily amount to ineffective assistance of counsel.¹⁹ Similarly, the United States Supreme Court has ruled that "the mere fact that Counsel failed to raise a claim" despite the fact that it might constitute ineffective performance, fails to assist the Defendant in his claim for ineffective assistance of Counsel.²⁰ In reviewing the record, however, this Court cannot find any allegations which amount to anything more than Counsel exercising his appropriate role as the defense strategist for Defendant.

19. Defendant argues that the basis for this ground for relief is that Counsel "only consulted with [D]efendant for a few minutes before trial, did not subpoena any

¹⁷ See *Harris v. State*, 947 A.2d 1121 (Del. 2008) (TABLE); *Younger*, 580 A.2d . At 555.

¹⁸ *Strickland*, 466 U.S. at 689.

¹⁹ See e.g., *Bellmore v. State*, 602 N.E. 2d 111, 123 (Ind. 1992).

²⁰ *Murray v. Carrier*, 477 U.S. 478, 486-487 (1986).

witnesses to testify on the defendant's character . . . or background.”²¹ While Defendant may believe this is not sound strategy, that assertion is not sufficient to meet Defendant's burden to show unreasonable performance by Counsel. Similarly, as required by the second prong in *Strickland*, Defendant does not show how Counsel's alleged failure to consult with him more than a few minutes or to call such witnesses, prejudices the outcome of his case.

20. Counsel denies that he failed to properly consult with Defendant and that he failed to call witnesses.²² A simple review of the transcript shows that Counsel filed and argued pretrial motions, was prepared for direct and cross-examination, and called three witnesses on behalf of Defendant.²³ Defendant's criticism of Counsel's performance is not sufficient to allege ineffective assistance of Counsel. As the Delaware Supreme Court has opined:

“Whether to call a witness, and how to cross-examine those who are called, are tactical decisions. A defendant challenging such decisions has the burden of supplying precisely what information would have been obtained had [Counsel] undertaken the desired investigation and how this information would have changed the result. The defendant must substantiate his concrete allegations of actual prejudice or else risk summary dismissal.”²⁴

²¹ Def. Supp. Mem. at 13.

²² Def. Aff. at 1.

²³ St. Resp. at 11.

²⁴ *Outten v. State*, 720 A.2d 547, 557 (Del. 1998).

21. Defendant's third ground for support must be denied because he fails to meet either prong of the *Strickland* test.

22. Finally, Defendant's fifth ground for relief questions Counsel's failure to investigate and develop mitigating evidence for his sentencing. This argument fails the second prong of the *Strickland* test. Defendant is a convicted child molester and rapist of children under the age of ten. The horrendous facts which were revealed from his victims show he systematically manipulated innocent children into performing numerous sex acts and, in one case, introduced a child to using hardcore drugs.²⁵ Defendant was ultimately sentenced to 290 years in prison, of which 244 years were minimum/mandatory years.²⁶ This Court cannot find any error on behalf of Counsel which could have resulted in prejudice, given the nature of the crimes and the fact that the sentences carried mandatory time.

²⁵ *Wood*, 956 A.2d at 1229-1230. The Delaware Supreme Court included in its affirmation a description of the abuse which involved the Defendant presenting a letter from a fake doctor telling one young victim that because she had accidentally hit him in the groin that she would now have to perform graphic sex acts in order to help him recuperate. Additionally, one victim testified that he told her that if she swallowed his semen, it would make her "pretty." Tr. at 13.

²⁶ St. Resp. at 13.

23. Accordingly, for the reasons stated above, Defendant's Motion for Postconviction Relief is DENIED.

IT IS SO RECOMMENDED,

Mark S. Vavala, Superior Court Commissioner

Original to Prothonotary

cc: Defense Attorney
State's Attorney
Defendant Pro Se
Angie Hairston, Prothonotary Pending Actions
Investigative Services